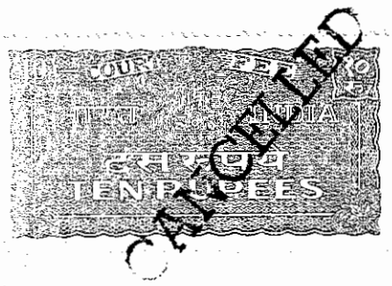

(3)

(1)

of 1st

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WP. No.314 of 2002

Ravikant Sen S/O Punnalal sen
R/O Katiyapara, Bilaspur (C.G.) Petitioner

V/S

Government of India / Bharat Sarkar
Ministry of labour / Shram Mantralaya
Through – its Desk officer, Rafi marg
New Delhi Respondent

PETITION UNDER ARTICLE 226 / 227 OF CONSTITUTION OF INDIA.

PARTICULARS OF THE PETITION

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Respondent no - 2 :- Bharat Sanchar Nigam Ltd.
Through :- Sub Divisional Officer,
Telephone office of General
Manager Telephone, Distt- B.S.N.L.
Bilaspur.

Tiwari Dehmukh)
on 6-12-06.

AFR

7.12.06

(94) (95)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 314 of 2002

Petitioner: Ravikant Sen

Versus

Respondents: Government of India/Bharat Sarkar Ministry of labour and another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri S.P. Kale, *Advocate for the petitioner.*

Shri R.M. Solapurkar, Advocate for the respondent No. 2.

ORDER

(Passed on 7th day of December, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The petitioner was appointed in the department of telecommunication under Sub Divisional Officer (T.), Bilaspur from 1.4.1986 as casual worker. Service of the petitioner was terminated on 1st April, 1988.

2. Being aggrieved, the petitioner filed an application before the Central Administrative Tribunal at Jabalpur on 2.3.1997 (Annexure P/1). The Central Administrative Tribunal, by his order dated 12th July, 1999 (Annexure P/2), dismissed the application filed by the petitioner, on the ground that the tribunal has no jurisdiction to entertain the dispute covered under the Industrial Disputes Act, 1947.

3. The petitioner thereafter raised the dispute after a long delay before the Government of India, Ministry of Labour/ respondent No. 1. The respondent No. 1, by his order dated 11.01.2000

(Annexure P/3), dismissed the application filed by the petitioner, held as under:-

> *"The dispute has been raised after a laps of over 11 years without any justification for the long delay."*

4. The identical issue came into consideration before this Court in the case of **Ramkumar Suryavanshi Vs. State of Chhattisgarh and others**[1], wherein this Court held that prejudice caused to other side on account of delay and/or whether the delay was fatal, can be considered only in the process of adjudication before the Labour Court. This case is squarely covered by the decision of this Court in the case of Ramkumar Suryavanshi Vs. State of Chhattisgarh and others (Supra).

5. In the case of **Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another**[2], the Supreme Court in para 10 observed thus:-

> "10.....the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....."

This dictum was followed subsequently in the cases of **Gurmail Singh v. Principal, Govt. College of Education and others**[3] and **S.M. Nilajkar and others v. Telecom District Manager, Karnataka**[4].

6. Accordingly, this petition is allowed and the respondent No. 1 is directed to refer the dispute within a period of four weeks to the Central Government Industrial Tribunal for adjudication from the date of receipt of a copy of this order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

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1. (2006 L.T. (CG) 135)
2. (1999) 6 SC 82.
3. (2000) 9 SCC 496
4. (2003) 4 SCC 27